

A.G. Contract No.: KR05-0594TRN  
ECS File No.: JPA 04-150  
Project No.: F025-2-522  
Section: Junction 89, Road 2 North  
Project: NB & SB Right Turn Lanes  
TRACS No.: H6734 01C  
Budget Source Item No.: 73308  
District Minor

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF CHINO VALLEY

THIS AGREEMENT is entered into this date September 14 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF CHINO VALLEY, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

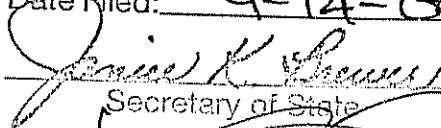

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The State and the Town desire to participate in the design, construction and maintenance of road widening improvements, relocating the signal poles and signal pull boxes on State Route (SR) 89 and Road 2 North, hereinafter referred to as the "Project". It is mutually agreed that the State will be the authorized agent and maintain the portion of the Project inside the State's right-of-way and the Town will design, construct and maintain the Project outside of the State's right-of-way and acquire any right-of-way necessary to accommodate the widening. The State and the Town each agree to pay for half of the cost of the Project, at an estimated amount of \$250,000.00.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27718  
Filed with the Secretary of State  
Date Filed: 9-14-05  
  
Secretary of State  
By: 

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Upon execution of this Agreement, advertisement of the Project and within thirty-days (30) upon receipt and approval of an invoice from the Town, remit to the Town, an amount currently estimated at \$125,000.00 for the State's share of the Project cost.

b. Review the design documents required for construction of the Project, and provide comments to the Town as appropriate and approve the final design.

c. Confer with and provide written consent to the Town on Project related contract modifications.

d. Grant the Town an Encroachment Permit through the Prescott District Maintenance Office, for work within the State's right-of-way to permit the Town to perform all planned construction work for the Project.

e. Upon completion of the Project, coordinate final inspection with the Town for approval and acceptance of the Project.

f. Upon completion, approval and acceptance of the Project, be responsible to maintain the Project portion that is within the State's right-of-way.

g. Upon completion and acceptance of the Project, reimburse the Town within thirty-days (30) after receipt of an invoice, any difference between the amount paid by the State and the State's proportional share of the actual construction costs for the Project.

### **2. The Town shall:**

a. Prepare and provide design plans, specifications and other such contract documents and services required for construction bidding and construction of the Project, and submit same to the State for comments as appropriate and incorporate State's review comments into final design.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the Town.

c. Acquire all necessary Right-of-Way for the Project and that Right-of-Way needed for highway operations will be acquired in the State's name; the State will establish the right-of-way to be incorporated into the State system by Resolution and approval of the Transportation Board. Prior to establishment, Town must provide to the State the original Deed(s), plus a Title Insurance Policy reflecting no encumbrances or liens owed, all at the Town's expense.

d. Obtain the necessary Right-of-Way Encroachment Permit through the Prescott District Maintenance Office, for the construction of the Project.

e. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the Town shall be the sole responsibility of the Town.

f. Complete the construction of the Project no later than December 31, 2007.

g. Upon execution, approval and acceptance of the Project, be responsible to maintain the Project portion that is within the Town's right-of-way.

h. Be responsible for an amount currently estimated at \$125,000.00 for the Town's share of the Project cost (not including Right-of-Way costs, which shall be the sole responsibility of the Town).

i. After advertisement of the Project, invoice the State for an estimated amount of \$125,000.00 for the Project.

j. Upon completion and acceptance of the Project, reimburse the State any part of the unused funds paid by the State and the actual cost for construction of the Project.

k. Waive the requirements of Arizona Revised Statute § 28-7209.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, the Town shall provide any provisions for maintenance of the Project outside of State's right-of-way. This Agreement may be cancelled at any time prior to the award of a project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the Town cancels this Agreement, the State shall in no way be obligated to maintain the Project.

2. The Town assumes full responsibility for the design, plans, specifications and reports in connection of the Town's widening improvement project outside of State's right-of-way. Any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, or any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Town will bear all costs associated therewith.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

Town of Chino Valley  
Attn: Bill Pupo  
1020 W. Palomino Road  
Chino Valley, Arizona 86323  
(928) 636-2646

10. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF CHINO VALLEY


STATE OF ARIZONA

Department of Transportation

By   
KAREN FANN  
Mayor

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By   
JAMI LEWIS  
Clerk

APPROVAL OF THE TOWN OF CHINO VALLEY

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF CHINO VALLEY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 28th day of July, 2005.

Musgrave Drutz & Kack, PC  
By Cathy L. Knepp  
Town Attorney

**RESOLUTION NO. 05-758**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF NORTH AND SOUTH BOUND RIGHT TURN LANES ON STATE ROUTE (SR) 89 AND ROAD 2 NORTH.**

WHEREAS, the Town of Chino Valley is empowered by Arizona Revised State Statutes §48-572 to enter into agreement with The State of Arizona Department of Transportation to participate in the design, construction, and maintenance of road widening improvements, relocating the signal poles and signal boxes for right turn lanes on State Route (SR) 89 and Road 2 North; and

WHEREAS, The State will be the authorized agent and maintain the portion of the Project inside the States' right-of-way; and

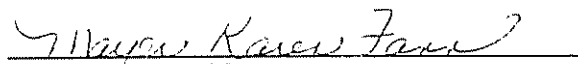
WHEREAS, The Town will design, construct, and maintain the Project outside of the State right-of-way and will acquire any right-of-way necessary to accommodate the widening; and

WHEREAS, The Town agrees to pay half of the cost of the Project at an estimated amount of \$125,000.00;

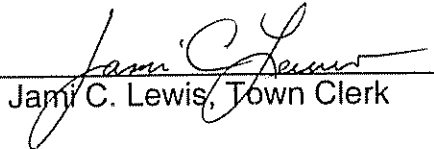
**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA:**

That it is in the best interests of the Town of Chino Valley to enter into an agreement with the Arizona Department of Transportation for the purpose of design and construction of North and South bound turn lanes on State Route (SR) 89 and Road 2 North. Funds will be paid to the State from the Road impact fund.


**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Chino Valley, Arizona this 25th day of August, 2005.

  
Karen Fann, Mayor

ATTEST:

  
\_\_\_\_\_  
Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Musgrove Drutz & Kack,  
Town Attorney



Terry Goddard  
Attorney General

**OFFICE OF THE ATTORNEY GENERAL**  
**State of Arizona**

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602 542 8855

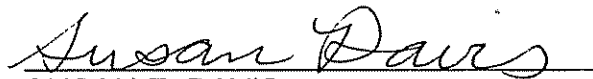
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0594TRN (**JPA 04-150**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Chino Valley, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: September 7, 2005

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:923274  
Attachment